IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
Central Excise Appeal No.15 of 2005

The Commissioner of Central
Excise, Mumbai. .. .. Appellant
v/s.
M/s.Jolly Board Ltd. .. .. Respondent

Mr.K.R. Chaudhary with Mr.Kiran Kandpile for appellant.

Mr.Jimmy Pochkhanwalla i/by Mr.Aditya Chitale for respondent.

CORAM : H.L. GOKHALE &
J.P. DEVADHAR, JJ.

DATED : 23rd November 2005

P.C. :

1. Heard Mr.Chaudhary in support of this Appeal. Mr.Pochkhanwalla appears for the respondent.

2. This Appeal seeks to challenge the order dated 23rd April 2004 passed by the Customs, Excise and Service Tax Appellate Tribunal, Mumbai, wherein the Appeal preferred by the Revenue against the order dated 1st June 2000 passed by the Commissioner of Central Excise and Customs (Appeals), came to be dismissed. What has happened in the present case is that the respondent has taken certain modvat credit erroneously and within a month or so thereafter

the amount has been returned to the concerned department. The Commissioner of Customs (Appeals) took a view that there was no fraud, collusion or mis-declaration. That being so, he declined to impose any penalty or to recover interest under Section 11AB of the Customs Excise Act. That order has been left undisturbed by the Tribunal. The decision is entirely on the facts of the case where a clear finding has been given by the Commissioner that there was no misrepresentation or fraud and, therefore, even the penalty under Rule 57 I(4) of the Central Excise Rules, could not be imposed.

3. A question is sought to be raised in this Appeal as to whether the Tribunal was in error in not insisting on payment of penalty and interest. In our view, that question does not arise in the present case. Appeal is dismissed.

(H.L. GOKHALE, J.)

(J.P. DEVADHAR, J.)